IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajasthan Shiksha Sewa Parishad Rajasthan, Bikaner v. State of Rajasthan and another

S.B.CIVIL WRIT PETITION NO.2828/2001
under Article 226 of the Constitution of India.

Date of Order : 24th October, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.Mridul Sr.Advocate assisted by Shri R.N.Upadhyay, for the petitioner.
Mr. K.L.Thakur, Addl.Advocate General.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. P.P.Choudhary, for the respondent.

BY THE COURT :

This petition for writ is preferred by the Headmasters of Secondary Schools, a post mentioned as item No.1(a) of Group “F” of Schedule-II appended to Rajasthan Educational Service Rules, 1970 (hereinafter referred to as “the Rules of 1970”) through their association named as Rajasthan Shiksha Sewa Parishad seeking challenge to part of the provisions made in column No.3 of item No.1(a) and 1(b) of Group “E”” of

Schedule-I to the extent it provides an avenue for promotion to Lecturers School Education to the post of Headmaster, Higher Secondary School, Senior Deputy Inspector of School, Manager Gurunanak Bhawan Jaipur and Manager Ravindra Rangmanch Jaipur.

His Excellency the Governor of Rajasthan while exercising powers conferred by proviso to Article 309 of the Constitution of India framed the Rules of 1970 regulating recruitment to posts in and the conditions of service. Rule 4 of the Rules of 1970 provides that the service shall consists of the posts as arranged in various groups specified in the Schedules appended with the Rules. The Schedule-I and Schedule-II appended with the Rules of 1970 pertains to the cadres for boys institutions and girls institutions respectively. The Group “E” of Schedule-I & II provides name of the post in Rajasthan Education Service, method of recruitment, minimum qualification and experience for direct recruitment as well as for appointment by way of promotion, post or posts from which promotion in service to be made and maximum age limit for direct recruitment. The entry No.1(a)(b)(c)(d) in Schedule-I relate to appointment to the post of Headmaster, Higher Secondary School for boys, Senior Deputy Inspector of Schools, Manager Gurunanak Bhawan Jaipur and Manager Ravindra Rangmanch Jaipur. The entries referred above under the Rules of 1970 read as under:-

S.No.	Name of Post	Method of recruitment with percentage	Minimum qualification and experience for direct recruitment	Post or posts from which promotion in to be made	Minumum qualifications and experience required for promotion	Maximum age limit for direct recruitment
1	2	3	4	5	6	7
			Group 'E'			
1(a)	Headmaster, Higher Sec. School for boys	[50% by promotion From Head Master, Secondary School and 50% by promotion from Lecturer School Education]	------	Group 'F' posts.	Masters' degree In addition to qualifications prescribed for Headmasters.	
		[Note—This method of recruitment by promotion will come into force only after the regularly appointed candidates on the post of Headmasters, Secondary School and equivalent posts upto 31.8.88 are regularly selected and appointed against the future vacancies of Headmaster's, Higher Secondary Schools.]				
1(b)	Senior Deputy Inspector of Schools.	[50% by promotion from Head Master, Secondary School and 50% by promotion from Lecturer, School Education]	-------	Group 'F' posts	Master's Degree in addition to qualifications prescribed for Headmasters.	
1(c)	Manager Guru Nanak Bhawan, Jaipur.	- do -	--------	- do -	- do -	
1(d)	Manager Ravindra Rang Manch, Jaipur	- do -	-------	- do -	- do -	
		[Note-This method of recruitment by promotion will come into force only after the regularly appointed candidates on the post of Headmasters, Secondary School and equivalent posts up to 31.8.88 are regularly selected and appointed against the future vacancies of Headmasters, Higher Secondary Schools.]				

In accordance with the provision above the appointment to the post of Headmaster Higher Secondary School, Senior Deputy Inspector of Schools, Manager Gurunanak Bhawan Jaipur and Manager Ravindra Rangmanch Jaipur are required to be made 100% by way of promotion with the ratio of 1:1 amongst the Headmasters Secondary School and Lecturers School Education. In Schedule-II the only entry in Group “E” is with regard to post of Headmistress, Higher Secondary Schools. The challenge in present petition

relates to Headmasters and Headmistresses Higher Secondary Schools, both on the same foundation, therefore, for the purpose of convenience, the term “Headmaster” is used for both the posts.

The post of Headmasters Secondary Schools and Lecturers School Education are part of Group “F” of Schedule-I under the Rules of 1970. It is pertinent to note that the post of Lecturer School Education was included in Rajasthan Educational Service as a consequence of an amendment introduced to the Rules of 1970 by a notification No.F.1(1)DOP/A-II/85 dated 6.9.1990 effective from 1.9.1988. By the same notification an avenue for promotion was given to the Lecturer School Education in the same proportion available to the Headmasters, Secondary Schools, to the post of Headmasters, Higher Secondary Schools. Prior to the amendment introduced as referred above under the notification dated 6.9.1990 the appointment to the post of Headmaster, Higher Secondary School, by way of promotion was available only to the Headmaster Secondary School. While including the post of Lecturer School Education in Rajasthan Educational Service an amendment was also introduced in Rajasthan Civil Service (Revised Pay Scales) Rules, 1989 keeping the Lecturers also in the same pay scales which were applicable for the post of Headmasters Secondary Schools.

A challenge to the notification dated 6.9.1990, whereby the post of Lecturer School Education was included in Rajasthan Education Service and an avenue for promotion was prescribed to them to the post of Headmaster Higher Secondary Schools was given by the present petitioner by way of filing a writ petition (DB Civil Writ Petition No.5965/90, Rajasthan Shiksha Sewa Parishad v. State of Rajasthan & Ors.) before this Court, which stood dismissed by the judgment dated October 7th, 1991. The Division Bench of this Court while upholding the notification dated 6.9.1990 held as under:-

> "Once the post of Lecturers have been encadred in the State Service looking to the qualifications i.e. IInd class post Graduate in the relevant subject with Degree or Diploma in Education from a University established by law in India and recognised institution and their scales of pay being the same as Headmasters of the Secondary School, if the rule making authority provided that the promotion to the posts of Headmasters, Higher Secondary School will be in proportion of 50:50 from amongst Headmasters, Secondary School, and Lecturers, in our opinion, it cannot be said that the said decision is arbitrary and unreasonable. It is for the rule making authority to provide as to in which manner the posts meant for promotion shall be filled in. It is for the rule making authority to provide the ratio and fix the ratio on the proportion and channel from

which the posts are to be filled in. It is a policy decision and unless it is arbitrary and illegal or against the provisions of the Constitution or it affects any of the vested rights of anybody, in our opinion, it cannot be challenged. The number of lecturers in various Schools in Rajasthan is much more than Headmasters Secondary Schools whose number appear to be about 2500 as stated by the Association of Lecturers, School Education in writ petition No.5562/90 in para 15, as on September 1, 1988. At any rate it can be said that the number of lecturers in various subjects is more than Headmasters, Secondary Schools. As stated earlier, before one becomes eligible for appointment as Lecturer, he must be Post-Graduate with a Degree or Diploma in Education recognised by the Government, whereas even a Second Grade Teacher being Bachelor or Diploma-holder in Education is eligible for promotion to the post of Headmaster, Secondary School. At any rate when the post of Lecturer has been encadred in the State Service Rules, and they have been provided the same pay scale as is payable to the Headmaster, Secondary School, it can be said that they became equal almost in all the respects to the post of Headmaster, Secondary School and if by rule 7 of the Amendment Rules of 1990, column 3- in Schedule I at S.No.1(a)(b)(c) and (d) and in Schedule III at S.Nos.1(i)(ii)(iii)(iv), 2 and 3 have been substituted under heading method of recruitment and it has been provided that 50% of the posts shall be filled by promotion from Head Master, Secondary Schools and 50% by promotion from

> Lecturer, School Education, such a decision cannot be said to be arbitrary or against the provisions of the Constitution or its Articles 14 and 16. One has a right of consideration for promotion in accordance with the provisions of rules in existence at the time when the post fell vacant."

Hon'ble Division Bench by the same judgment also held that there was no illegality in giving retrospective effect to the amendment introduced under the notification dated 6.9.1990.

On revision of pay scales under the Rajasthan Civil Services (Revised Pay Scales) Rules, 1998 the pay scale of Rs.6500-10500 was allowed to the Headmasters, Secondary Schools and also to the Lecturers, School Education. An amendment was introduced in the revised pay scales Rules of 1998 under a notification dated 7.8.1998 introducing a new pay scale i.e. the pay scale No.12-A with the scale of Rs.7500-250-12000. By the same notification the pay scale newly introduced i.e. 12-A was allowed to the Headmasters Secondary Schools. As a consequence to the notification dated 7.8.1998 the Headmasters Secondary Schools became entitled for getting fixation of their pay in the pay scale of Rs.7500-12000 whereas the Lecturers School Education remained in the pay scale of Rs.6500-10500.

The petitioner on grant of pay scale No.12-A (7500-12000) to the Headmasters Secondary Schools

preferred the present writ petition with a contention that after revision of pay scales qua the Headmasters Secondary Schools they form a separate class than the Lecturers which is superior to the Lecturers School Education, therefore, by providing the same avenue for promotion to the Lecturers School Education as available to Headmasters Secondary Schools the unequals are treated as equals and that offends Articles 14 and 16 of the Constitution of India.

To substantiate the contention counsel for the petitioner has mainly relied upon Division Bench judgment of this Court rendered in the case of Miss Kusum Tondan and others v. State of Rajasthan and anothers, reported in 1991(2) WLC (Raj.) 702. In the aforesaid case the Division Bench of this Court held that Group “F” post is inferior post to Group “E” post, therefore, providing promotion to the holders of the posts in Group “E” & “F” to the posts in Group “D” under the Rules of 1970 amounts to treating unequals as equals and the same violates Article 14 of the Constitution of India. The relevant discussion and findings given by the Division Bench of this Court in the case of Miss Kusum Tondan (supra) reads as under:-

> “8.We have already said earlier that group 'F' post is interior post to group 'E' post. In other words group E posts are superior to group F posts. It will further appear that the holders of posts of group F item 1(a)

are entitled to promotion to the post at item 1(a) are Group E. Thus, the grades of posts in Group F being less i.e. 2000-3500 than the pay scale of holders of the posts in Group 'E' i.e. 2200-4000, the post group 'F' being superior to group F post, we are of the opinion that by providing in column 5 item 1(a) of Group-D-Section II that promotion shall be made from the holders of posts in Group 'E' and 'F' amounts to treating unequals as equals and therefore it is violative of Article 14 of the Constitution of India.

9.There is yet another ground to arrive at the same conclusion. We have already said that the posts under Group F are the lowest posts under the State Service Rules and the first promotion from the group F post is to Group E post and the promotion has to be on the seniority cum merit basis as providing in sub-rule(5) of rule 25 of the State Service Rules which provides that promotion shall be on the basis of seniority-cum-merit. Sub-rule(6) or rule 25 provides that selection for promotion to all other higher posts or higher categories of posts in the State Service shall be made on the basis of merit and on the basis of seniority cum merit in the proportion of 50:50. Under the provision to Sub-rule(6) of rule 25 if the Committee is satisfied that suitable persons are not available for selection by promotion strictly on the basis of merit in a particular year, selection by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in the State Service Rules. Under Sub-rule(7) of rule 25,

selection for promotion to the highest post/posts in the State Service shall always be made on the basis of merit alone. We have already said earlier that the highest post is of Joint Director and therefore so far as the case of posts in Group-D-Section II is concerned, they will be filled in 50% on the basis of seniority-cum-merit and 50% by merit. Rule 23-A of the State Service Rules reads as under:-

> "No officer shall be considered for promotion unless he is substantively appointed and confirmed on the next post. If no officer substantive in the next lower post is eligible for promotion, officers who have been appointed on such post on officiating basis after selection in accordance with one of the methods of recruitment or under any Service Rules promulgated under provision to Article 309 of the Constitution of India may be considered for promotion on officiating basis only in the order of seniority in which they would have been had they been substantive on the said lower post."

A perusal of the aforesaid extracted rule 23-A will show that before one can be considered for promotion he must be substantial appointed and confirmed on the next lower post and so far as the promotion to the post of Principal at item 1(a) of Group D Sec. II is concerned, the next lower post will be the post in Group 'E' and not Group 'F'. It will further appear from rule 23-A that is no officer substantive in the

next lower post is eligible for promotion, officers who have been appointed on such post on officiating basis after selection in accordance with one of the methods of recruitment or under any service rules promulgated under the proviso to Article 309 of the Constitution may be considered for promotion and that too an officiating basis only in the order of seniority in which they would have been substantive on the said lower post. It will therefore, appear that even if an officer is appointed to Group 'E' post from Group 'F' post on officiating basis after selection in accordance with any method of recruitment or under any service rule, promulgated under proviso to Article 309 of the Constitution, he can only be considered for promotion on officiating basis in order of seniority and not on the basis of merit. In other words, the persons from group F of Schedule I to the State Service Rules, even if promoted on officiating basis to a post in Group 'E', if no substantive post in Group 'E' would have been available, he could have been promoted to Group D-Sec. II on officiating basis in order of seniority and not on merit. The scheme of the Rules therefore is that only a person holding the next lower post in substantive capacity is entitled for promotion on the basis of merit in case some proportion of posts are filled on the basis of merit and therefore, so far as holders of posts of group 'F' are concerned because the post of Group 'F' not being the next lower post to the post under Group 'D' Sec. II in our opinion, they could not be considered for selection on the basis of merit."

Relying upon the ratio of judgment of Division Bench of this Court in the case of Miss Kusum Tondan (supra) it is contended by counsel for the petitioner that Headmasters Secondary Schools are entitled to get them fixed in higher pay scales than the pay scales prescribed for Lecturers School Education, as such they holds a post superior to the Lecturers School Education, therefore, prescription of the same avenue for promotion to the Headmasters Secondary Schools, and Lecturers School Education violates Articles 14 and 16 of the Constitution of India. It is also emphasised by counsel for the petitioner that Division Bench of this Court in the case of Rajasthan Shiksha Sewa Parishad v. State of Rajasthan & ors., DBCivil Writ Petition No.5965/90, treated the Headmasters Secondary Schools and Lecturers School Education at equal pedestal as both the posts at the relevant time were in same grade of pay scales, and that position stood changed on being grant of pay scales of Rs.7500-12000 (pay scale No.12-A) to the headmasters Secondary Schools.

Counsel for the petitioner quite fairly stated that validity of the Division Bench judgment of this Court rendered in the case of Miss Kusum Tondan (supra) was examined by Hon'ble Supreme Court in the case of State of Rajasthan & Anr. v. Rajendra Kumar Godika & Ors. reported in 1993 Suppl. (3) SCC 150, and

the Hon'ble Supreme Court set aside the said judgment, however, the ratio laid down by Division Bench was not interfered. According to counsel for the petitioner Hon'ble Supreme Court set aside the Division Bench judgment of this Court in the case of Miss Kusum Tondan (supra) by holding that there can be no legitimate grievance to the members of Group “E” in case vacancies remain to be filled in Group “D” which can be filled only by promotion after everyone in Group “E” has been considered and only those not found fit for promotion therein which left unpromoted.

Heard counsel for the parties.

As stated in preceding paras the challenge to the provisions of column No.3 to item 1(a) and 1(b) of Group “E” of Schedule I appended to the Rules of 1970 to the extent it provides promotion avenues to the Lecturers School Education in equal ratio to the Headmasters Secondary Schools was earlier also given by present petitioner by way of filing a writ petition bearing No.DBCivil Writ Petition No.5965/90, Rajasthan Shiksha Sewa Parishad v. State of Rajasthan & Ors. and that writ petition was dismissed by judgment dated October 7, 1991. The petitioner considered himself entitled to challenge the aforesaid provision afresh by way of filing the present writ petition due to change brought about in the pay scales of the Headmasters Secondary Schools by introducing an

amendment in Rajasthan Civil Service (Revised Pay Scales) Rules 1998 by notification dated 7.8.1998.

Precisely the only question required to be decided by this Court in present writ petition is that as to whether the prescription of same channel of promotion to the posts of Headmasters, Secondary Schools and Lecturers School Education amount to treat unequals as equals and the same violates the principles of equality enshrined under Articles 14 and 16 of the Constitution of India and the judgment of this Court in DBCivil Writ Petition No.5965/1990 has become irrelevant after providing the pay scale No.12-A to the Headmasters, Secondary Schools. In more specific words that as to whether by having a pay scale higher than the pay scale prescribed to the post of Lecturers School Education, the post of Headmaster Secondary School become a post superior than to the post of Lecturers School Education and by keeping these two posts in one stream for the purpose of providing a promotional avenue to the post of Headmasters higher Secondary Schools, the unequals are treated equals.

At the first instance I would like to state that reliance placed by counsel for the petitioner upon the Division Bench judgment of this Court in the case of Miss Kusum Tondan (supra) is absolutely irrelevant in present controversy. The law laid down

by Division Bench of this Court in the case of Miss Kusum Tondan (supra) is having no application in the facts of the present case. In the case of Miss Kusum Tondan (supra) an avenue for promotion was provided to the holders of the posts in Group “E” and “F” to the posts which are part of Group “D”. Hon'ble Division Bench held that the posts in Group “F” are the lowest posts under the Rules of 1970 having an avenue for promotion to the posts in Group “E”, therefore, the posts in Group “E” are superior to the posts which are part of Group “F”. In this factual background the Division Bench in the case of Miss Kusum Tondan (supra) held that the persons holding the posts in Group “E” and the persons holding the posts in Group “F” could not be treated at par. The prescription of an avenue for promotion to Group “D” by a common seniority of holders of posts in Group “E” and Group “F”, therefore, was treated in violation of Articles 14 and 16 of the Constitution of India.

In the present case the posts of Lecturers School Education and post of Headmasters Secondary Schools both are part of Group “F” in Schedule-I appended to the Rules of 1970. The Lecturers School Education are having no avenue for promotion under the Rules of 1970 on any post in Group “F” of Schedule-I, therefore, it cannot be said that the post of Lecturer School Education is a post subordinate to any other post prescribed under Group “F” itself. In fact Group

“F” in Schedule-I appended to the Rules of 1970 itself forms an independent class. The post of Headmasters Secondary Schools as well as the post of Lecturers School Education are part of it.

Rule 4 of the Rules of 1970 specifically provides that the Rajasthan Education Service shall consists of the posts as arranged in various groups specified in the Schedule. By the Rules of 1970 the Rajasthan Education Service is classified according to their status in various groups, as such the post of Lecturer School Education cannot be treated a post subordinate or inferior to the post of Headmasters Secondary Schools.

It is true that at present the Headmasters Secondary Schools are entitled for higher pay scale than the pay scales prescribed for the post of Lecturers School Education but merely on this count the post of Headmaster Secondary School cannot be treated a post higher than to the post of Lecturer School Education. At the cost of repetition it is pertinent to note that no avenue for promotion is available to the Lecturer School Education on any post in Group “F” itself. All the posts in Group “F” including the post of Headmasters Secondary Schools and the Lecturers School Education are having avenue for promotion in Group “E”. This fact clearly proves that the intention of law framers was to keep all the

posts in Group “F” at same pedestal with same status and same forms one class. The prescription of higher pay scale to one post among the various posts prescribed in that group does not change the nature and character of group classified under the Rules of 1970.

I do not find any illegality in providing same channel of promotion to the posts having different pay scales but which are part of one group under the Rules of 1970. Under the Rules of 1970 the classification of the posts is made groupwise and not on basis of pay scales. Consequently I do not find any merit in the contention raised by the petitioner while giving challenge to the impugned provisions.

Accordingly the petition for writ fails and, therefore, is dismissed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.